No. 11205

In the United States Circuit Court of Appeals for the Ninth Circuit

VIOLA JUANITA HATCHITT, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

JUANA SATURNINO HATCHITT, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

BRIEF FOR THE UNITED STATES OF AMERICA, APPELLEE

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INDEX

CITATIONS

691491—46

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OPINION BELOW

The unreported opinion of the district court is found at R. 40–45.

JURISDICTION

This consolidated appeal is from final judgments of the trial court entered June 20, 1945, upon the motion of the Government in each case for a summary judgment of dismissal of a complaint which sought to establish plaintiff's right to a trust patent for a particular allotment on the Palm Springs Indian Reservation

(R. 50, 52). Notices of appeal were filed September 1, 1945 (R. 54). The jurisdiction of the district court was invoked under the Act of August 15, 1894, 28 Stat. 286, as amended, 25 U. S. C. sec. 345, which authorizes Indians who are claiming allotments to prosecute suits therefor in the proper district courts of the United States and gives those courts jurisdiction of such suits. The jurisdiction of this Court rests upon section 128 of the Judicial Code, as amended, 28 U. S. C. sec. 225 (a), and upon the Act of August 15, 1894, as amended, 25 U. S. C. sec. 345, providing that, in cases under that Act, the right of appeal shall be allowed to the parties as in other cases.

STATUTE INVOLVED

The material portion of the Act of August 15, 1894, 28 Stat. 286, as amended, 25 U. S. C. sec. 345, is set out in the appendix, *infra,* p. 11.

QUESTIONS PRESENTED

1. Whether the judgment in the case of *St. Marie* v. *United States,* 108 F. 2d 876, bound and concluded the parties hereto as to the subject matter of this action, and, if not,

2. Whether appellants were entitled to trust patents for certain lands in the Palm Springs Indian Reservation.

STATEMENT

Viola Juanita Hatchitt, a minor, by Juana S. Hatchitt, *prochein ami,* filed an action, No. 1209–M, in the District Court of the United States for the Southern District of California, Central Division, for

a trust patent to a certain allotment on the Palm Springs Indian Reservation (R. 21). Juana Saturnino Hatchitt filed a like action, No. 1208–M. Pursuant to stipulation, the two cases were renumbered 1209–Y Eq. and 1208–Y Eq., respectively, consolidated for hearing, and tried with the case of *Genevieve P. St. Marie* v. *United States,* No. 918–Y Eq. (cf. R. 41). Judgments were entered for the United States (R. 34). *St. Marie* v. *United States,* 24 F. Supp. 237. Appeal was taken to this Court which affirmed the judgments. 108 F. 2d 876. The Supreme Court of the United States denied certiorari for the reason that the petition therefor was filed too late. 311 U. S. 652.

Viola Juanita Hatchitt and Juana Saturnino Hatchitt subsequently filed new suits, 4235 O'C. Civil and 4236 O'C. Civil, for the same relief claimed in their prior actions (R. 2, 9). Answers were made (R. 10, 35) and the Government then moved for summary judgments of dismissal on the ground that the parties were bound and concluded as to the subject matter of their actions by the decrees entered in their prior suits (R. 36). The details concerning the preparation of allotment schedules relating to the Palm Springs Reservation are set out at length in the Government's brief in *United States* v. *Lee Arenas,* No. 11,195, now pending in this Court. As appears therein (pp. 7–11), a schedule was prepared by Wadsworth, the allotting agent, in 1923. Subsequently, he was instructed to draw up an entirely new schedule so as to include only those Indians who voluntarily made selections and such a schedule was prepared in 1927. Thereafter the Secretary of the Interior expressly disap-

proved the allotment schedule. The district court held that the decree in the St. Marie litigation was *res judicata* of appellants' present suits (R. 40–46). Accordingly, the court, by order of May 29, 1945, granted the motions of the Government (R. 40), and final judgments of dismissal were entered June 20, 1945 (R. 50, 52). These appeals followed. The evidence and proceedings in *United States* v. *Lee Arenas,* now pending in this Court, No. 11,195, were received in evidence as part of the proceedings in these cases and, by stipulation, were included in the record here by reference (R. 57–58).

ARGUMENT

I

The judgment in the case of *St. Marie* v. *United States* bound and concluded the parties hereto as to the subject matter of this action.

A. *Appellants Are Asserting the Same Causes of Action that Were Determined in the St. Marie Case.*— Appellants state that "if a different claim or demand is involved in the subsequent action, the decision in the former case is not res judicata." (Br. 14).[1] We agree. But here there is no different claim or demand. The issue in the former case was the right of appellants to trust patents for the lands in suit. That is the issue in this case. What appellants seek to do here is to relitigate this issue, again asserting their claims to the same property but on the

[1] It should be noted that appellants did not state that this contention would be one of the points to be relied upon in this appeal (R. 62–63).

basis of other facts—what was done by the Special Allotting Agent in 1923 rather than in 1927. This is a matter which might have been litigated in the former case, and appellants are foreclosed from raising it now. *United States* v. *California and Ore. Land Co.,* 192 U. S. 355 (1904); *Northern Pacific Railway* v. *Slaght,* 205 U. S. 122, 133 (1907). *MacDonnel* v. *Capital Co.,* 130 F. 2d 311, 317–318 (C. C. A. 9, 1942).

In the oft-cited *Northern Pacific Railway* case, the court said (p. 133):

> In other words, plaintiff in error, as successor of the Spokane and Palouse Railway Company, again asserts title to the very property that was the subject of the other suit, the source of title, only, being different. If this may be done, how often may it be repeated? If defeated upon the new title, may plaintiff in error assert still another one, either in its predecessor or in itself, and repeat as often as it may vary its claim? The principle of *res adjudicata* and the cases enforcing and illustrating that principle declare otherwise.

There, as here, it was argued that the only effect of the former decree was to decide against what was there asserted as the basis of a right to the property in suit. But the court held otherwise, and in connection with the determination of what constituted a "new claim or demand", adopted the following statement of the rule by Herman on Estoppel, sec. 92 (p. 131):[2]

[2] The Court in passing points out that a distinction between personal actions and real actions should be noted in the consideration of this question.

> Although there may be several different claims for the same thing, there can be only one right of property in it; therefore, when a cause of action has resulted in favor of the defendant, when the plaintiff claims the property of a certain thing there can be no other action maintained against the same party for the same property, for that would be to renew the question already decided, for *the single question in litigation was whether the property belonged to the plaintiff or not; and it is of no importance that the plaintiff failed to set up all his rights upon which his cause of action could have been maintained; it is sufficient that it might have been litigated.* [Italics supplied.]

The mere multiplication of grounds alleged as causing the same injury does not result in multiplying the causes of action. *Baltimore S. S. Co.* v. *Phillips,* 274 U. S. 316, 321 (1927). That case, cited by appellants (Br. 15) as authority for the proposition that the instant case involves a cause of action other than that in the former cases, clearly points to the contrary conclusion. If appellants had pursued the quotation they make one sentence further they would have found that that case was held not to fall under the branch of the rule they seek to invoke but "that the facts here gave rise to a single cause of action for damages and that the first branch of the rule applied" (p. 319). The court relies upon and discusses the case of *United States* v. *California and Ore. Land Co.,* 192 U. S. 355 (1904) in support of its holding. That case held that a different means of establishing title

to the fee of property was not a new cause of action and did not remove the bar of *res judicata*. In the *Baltimore S. S. Co.* case, the Court laid down a principle which applies directly to the case at bar. It said (p. 321):

> A cause of action does not consist of facts, but of the unlawful violation of a right which the facts show. The number and variety of the facts alleged do not establish more than one cause of action so long as their result, whether they be considered severally or in combination, is the violation of but one right by a single legal wrong. The mere multiplication of grounds of negligence alleged as causing the same injury does not result in multiplying the causes of action.

Cf. *Dern* v. *Tanner*, 96 F. 2d 401, 403 (C. C. A. 9, 1938).

Here, appellants are asserting a claim to trust patents of the identical land for which they claimed patents in the former suits (R. 23, 4). It follows that the earlier judgments conclusively determine that they have no rights to such patents.

B. *The United States Is Not Estopped To Plead Res Judicata.*—Appellants, in point two of their brief, argue that because of the relationship existing between the Government and the Indians, the United States is estopped to plead *res judicata*. No case so holding is cited nor has any been found. On the contrary, the Supreme Court has declared, in a suit by Indians against the United States, that but for

the enactment of a specific statute waiving a former adjudication in the suit,[3] the doctrine of *res judicata* would clearly apply. *Cherokee Nation* v. *United States,* 270 U. S. 476, 486 (1926). Cf. *Klamath Indians* v. *United States,* 296 U. S. 244 (1935) and *United States* v. *Klamath Indians,* 304 U. S. 119 (1938). Certainly, no reason is apparent why there should not be an end to litigation between an Indian and the United States as well as between other litigants. The argument is essentially moralistic, appellants contending that "it is not the duty of the Government, by the highly technical defense of *res judicata,* to attempt to defeat the lawful right of appellants to their allotment trust patents" (Br. 21). However, the paramount Governmental duty here is to protect the interests of all the Palm Springs Indians, and to make sure that some members will not secure an unjustified advantage over the others, which would be the case if appellants prevailed. By parity of reasoning the argument would be that because the Government is the guardian of the plaintiffs who sue under the 1894 Act, it could never assert any defense to such suit. Plainly Congress had no such intention when it passed the 1894 Act.

Furthermore, appellants admit (Br. 23) that the Government may not be estopped when acting in a

[3] For a compilation of Acts of Congress which, in conferring jurisdiction on the Court of Claims in Indian cases, have limited the claims to those not theretofore determined or have expressly authorized the trial *de novo* of claims theretofore determined, see Cohen, Handbook of Federal Indian Law, page 376, footnotes 134 and 135.

sovereign rather than a proprietary capacity, and the Supreme Court has stated that in this type of case the Government's relation to the Indians is that of a sovereign. *United States* v. *Shoshone Tribe,* 304 U. S. 111, 116–118 (1938). And, as this Court stated in *Berger* v. *Ohlson,* 120 F. 2d 56, 60 (1941) with reference to a similar attempt to apply estoppel to the Government when it was allegedly acting in a proprietary capacity "We are of the opinion that the cases cited do not support such an exception to the established rule."

II

Even if appellants were not bound by the former judgments, they have no right to the trust patents claimed by them

In *United States* v. *Lee Arenas,* No. 11,195 now pending in this Court, the Government takes the position that the members of the Palm Springs Band whose names are included on the 1923 and 1927 schedules do not have a right to trust patents to the allotments listed on those schedules.[4] For this additional reason, we submit that the dismissal of appellants' complaints was correct.

In point three, appellants (Br. 24–27) contend that the United States is estopped to deny their right to trust patents. For the reasons stated in the *Arenas* brief, pp. 29–34, we submit that the Government is not estopped. Appellants also refer to the merits of the case in point two (Br. 21–23), where they take

[4] The record in the *Lee Arenas* case was incorporated by reference into the record on this consolidated appeal (R. 57–58).

the position that the Supreme Court's decision in *Arenas* v. *United States,* 322 U. S. 419, establishes their right to the patents. For the reasons stated in the *Arenas brief,* pp. 14–18, we submit that, on the contrary, the Supreme Court's decision supports the refusal of the Secretary of the Interior to make allotments according to the 1923 and 1927 schedules.

CONCLUSION

Accordingly, it is submitted that the judgments of the district court should be affirmed.

Respectfully,

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APRIL 1946.

APPENDIX

The pertinent portion of the Act of August 15, 1894, 28 Stat. 286, as amended, 25 U. S. C. sec. 345, is as follows:

> § 345. Actions for allotments. All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him, but this provision shall not apply to any lands held August 15, 1894, by either of the Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency: *Provided,* That the right of appeal shall be allowed to either party as in other cases.

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